

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BILLI H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C22-5109-BAT

**ORDER REVERSING AND  
REMANDING FOR FURTHER  
ADMINISTRATIVE PROCEEDINGS**

Plaintiff Billi H. seeks review of the denial of her application for Supplemental Security Income and Disability Insurance Benefits. She contends the ALJ erred by miscalculating the medical evidence and her testimony and by failing to discuss the weight given to the lay witness statements. Dkt. 11. Although the Court finds no error in the ALJ's assessment of the medical evidence, the Court finds that the ALJ erred by failing to give specific reasons for rejecting plaintiff's testimony and by failing to give any reasons for discounting the lay witness evidence. Accordingly, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

**BACKGROUND**

Plaintiff is currently 44 years old, has at least a high school education, and has worked as a mortgage loan processor. Tr. 1051. She applied for benefits in August 2017, alleging disability

1 as of June 30, 2015. Tr. 201. The Commissioner issued a final decision finding plaintiff not  
2 disabled. Tr. 1, 22-39. On appeal, this Court reversed that decision and remanded for further  
3 administrative proceedings. Tr. 1149-63. On remand, the ALJ conducted a second hearing and  
4 issued a second decision finding plaintiff not disabled. 1034-53. Plaintiff now seeks review of  
5 that decision.

### 6 THE ALJ'S DECISION

7 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found that plaintiff had not  
8 engaged in substantial gainful activity since the alleged onset date; she had the following severe  
9 impairments: a neurogenic bladder, gastroparesis, fibromyalgia, chronic low back pain status  
10 post lumbar surgery, a right shoulder rotator cuff impairment, migraines, insomnia, a bipolar  
11 disorder, depression, anxiety, and post-traumatic stress disorder; and that these impairments did  
12 not meet or equal the requirements of a listed impairment. Tr. 1039-40. The ALJ found that  
13 plaintiff had the residual functional capacity to perform less than the full range of light work,  
14 with additional exertional, reaching, postural, and environmental limitations; she could perform  
15 simple, routine tasks, frequently interact with supervisors and coworkers and occasionally  
16 interact with the public in a superficial nature; she must work indoors within two to three  
17 minutes of a bathroom. Tr. 1042-42. The ALJ found that plaintiff could not perform her past  
18 work, but, as there are jobs that exist in significant numbers in the national economy that she  
19 could perform, she was not disabled. Tr. 1051-53.

### 20 DISCUSSION

21 The Court will reverse the ALJ's decision only if it was not supported by substantial  
22 evidence in the record as a whole or if the ALJ applied the wrong legal standard. *Molina v.*

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<sup>1</sup> 20 C.F.R. §§ 404.1520, 416.920.

1 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The ALJ's decision may not be reversed on account  
2 of an error that is harmless. *Id.* at 1111. The Court may neither reweigh the evidence nor  
3 substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954  
4 (9th Cir. 2002). Where the evidence is susceptible to more than one rational interpretation, the  
5 Court must uphold the Commissioner's interpretation. *Id.*

6 **A. Medical opinions**

7 Plaintiff argues that the ALJ erred in weighing the medical opinions of Karen Hye,  
8 Psy.D., and physical therapist Alika Antone, D.P.T., as cosigned by Christine Macatuno, M.D.  
9 Dkt. 11 at 5, 9. When considering medical opinions for applications filed on or after March 27,  
10 2017, the ALJ considers the persuasiveness of the medical opinion using five factors  
11 (supportability, consistency, relationship with claimant, specialization, and other), but  
12 supportability and consistency are the two most important factors. 20 C.F.R. §§ 404.1520c(b)(2),  
13 416.920c(b)(2), (c) (2017). The ALJ must explain in her decision how she considered the factors  
14 of supportability and consistency, but the ALJ is not required to explain how she considered the  
15 other factors, unless the ALJ finds that two or more medical opinions or prior administrative  
16 medical findings about the same issue are both equally well-supported and consistent with the  
17 record, but not identical. 20 C.F.R. §§ 404.1520c(b), 416.920c(b); §§ 404.1520c(b)(3),  
18 416.920c(b)(3).

19 The Ninth Circuit has held that the revised regulations governing applications filed after  
20 March 27, 2017, are irreconcilable with the prior caselaw that gave special deference to the  
21 opinions of treating and examining doctors on account of their relationship with the claimant and  
22 that required the ALJ to provide specific and legitimate reasons to reject a treating doctor's  
23 opinion. *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). The court recognized that

1 “insisting that ALJs provide a more robust explanation when discrediting evidence from certain  
2 sources necessarily favors the evidence from those sources—contrary to the revised regulations.”  
3 *Id.* Nevertheless, an ALJ cannot reject a doctor’s opinion as unsupported or inconsistent without  
4 providing an explanation supported by substantial evidence. *Id.*

5 Plaintiff posits that the *Woods* court offered no guidance as to the level of articulation  
6 required for a reviewing court to determine whether an ALJ’s decision was supported by  
7 substantial evidence and has thereby “sown confusion” in the review of an ALJ’s assessment of a  
8 medical opinion’s persuasiveness. Dkt. 11 at 5. She argues that the Court should therefore review  
9 the ALJ’s weighing of opinion evidence using the same factors that have been applied for over  
10 30 years—i.e., the factors developed under prior caselaw. *Id.*

11 This argument directly contravenes the *Woods* court’s holding that the use of these  
12 factors is irreconcilable with the revised regulations. The Court cannot accept plaintiff’s  
13 invitation to review the ALJ’s decision in a manner that directly contravenes the governing  
14 regulations and binding Ninth Circuit case law. The Court will evaluate whether the reasons the  
15 ALJ gave for finding the opinions unpersuasive meet the requirements of the revised regulations  
16 and are supported by substantial evidence. But the Court cannot and will not hold the ALJ to a  
17 higher standard than required by the regulations and the case law.

18 *I. Dr. Hye*

19 Dr. Hye, plaintiff’s treating psychologist, submitted a statement in December 2017 in  
20 which she stated that to her understanding, plaintiff had significant daily functioning impacts due  
21 to her mood disorder, panic disorder, fibromyalgia, migraines, and chronic pain; per plaintiff’s  
22 report, her functioning had declined significantly since her symptoms had developed several  
23 years ago. Tr. 843. Dr. Hye reported her observations that plaintiff experienced pain and fatigue.

1 *Id.* She also reported that plaintiff exhibited symptoms of cognitive impairment, including  
2 confusion, attention, and concentration, which Dr. Hye opined was likely due to a combination  
3 of psychological factors and fibromyalgia, and which were demonstrated on cognitive screening  
4 tests. *Id.* Dr. Hye also reported that plaintiff was socially isolated, which caused her to  
5 experience significant symptoms of depression, and had symptoms of panic with agoraphobia.  
6 Tr. 844. She opined that plaintiff was significantly limited in many areas of functioning and  
7 would struggle in a work environment. Tr. 845-47.

8 In October 2018, Dr. Hye stated that plaintiff's impairments and limitations remained the  
9 same as at the time of her previous opinion, and that since that time plaintiff had failed two  
10 medication trials and was in the process of establishing psychiatric treatment with a new  
11 provider. Tr. 841-42.

12 In April 2019, after the first ALJ decision finding plaintiff not disabled, Dr. Hye wrote a  
13 letter rebutting the ALJ's assessment of her opinion. Tr. 1384-87. She wrote that, contrary to the  
14 ALJ's finding that plaintiff had no therapy appointments or evaluations with Dr. Hye after late  
15 2017, plaintiff had consistently been under Dr. Hye's care since June of 2017 and Dr. Hye had  
16 seen plaintiff 40 times between that date and the date of the letter. Tr. 1384. Dr. Hye also noted  
17 that the ALJ had not discussed her October 2018 update or referenced plaintiff's psychiatric  
18 treatment records or the psychiatric medication plaintiff had been prescribed. *Id.* And Dr. Hye  
19 disputed numerous specific findings from the first ALJ decision, including the ALJ's assessment  
20 of plaintiff's insomnia, mood, affect, cooperation, cognition and mental limitations, and ability to  
21 engage in activities of daily living and travel. Tr. 1385-87. Dr. Hye opined that plaintiff's  
22 chronic medical and mental health issues affected her ability to be a reliable, productive  
23 employee on a sustained basis and that, although plaintiff followed through on all treatment

1 recommendations, she had been unable to find a medication regimen that decreased her  
2 symptoms to a manageable point. Tr. 1597. Dr. Hye opined that based on the unpredictability of  
3 plaintiff's panic disorder and fibromyalgia, it was unlikely that she could return to consistent,  
4 full-time work. *Id.*

5 The ALJ found these opinions unpersuasive, finding that they were inconsistent with  
6 plaintiff's frequently unremarkable mental status examinations, they were unsupported by Dr.  
7 Hye's only somewhat remarkable objective findings, Dr. Hye admittedly based many of her  
8 opinions on plaintiff's subjective reports regarding her functioning, as opposed to objective  
9 testing, and there was no indication Dr. Hye ever examined plaintiff with respect to her physical  
10 condition, including her fibromyalgia, and Dr. Hye is not a medical examiner. Tr. 1049-50.

11 Plaintiff argues that these reasons are not supported by substantial evidence. Dkt. 11 at 7.  
12 She first argues that the ALJ cited to only two examples to support the finding regarding  
13 unremarkable mental status exams and this does not constitute substantial evidence. *Id.* The ALJ  
14 cited to a September 2016 neurology consultation and a March 2019 psychiatric progress note,  
15 both documenting unremarkable mental status examination findings. Tr. 1049 (citing Tr. 607,  
16 1548). But plaintiff does not point to other mental status examinations that were consistent with  
17 Dr. Hye's opinions. The ALJ could reasonably conclude that the severe limitations Dr. Hye  
18 opined would be present in mental status examinations by other providers and the lack of such  
19 consistency undermined the persuasiveness of Dr. Hye's opinions. Plaintiff also asserts that Dr.  
20 Hye's personal observations carry more weight than mental status examinations that were  
21 unrelated to the symptoms Dr. Hye described. Dkt. 11 at 7. But this argument merely proposes a  
22 reweighing of the evidence, which cannot form the basis for reversal. *Thomas*, 278 F.3d at 954.

1 Plaintiff next argues that the ALJ's finding that Dr. Hye's opinion was only somewhat  
2 supported by the objective findings "missed the mark" because Dr. Hye was opining as to  
3 plaintiff's ability to function in a work environment, not describing plaintiff's daily functioning,  
4 and therefore the objective findings the ALJ cited, which documented plaintiff's presentation in a  
5 clinical setting, represented a "jumping off point." Dkt. 11 at 7. This argument merely proposes  
6 an alternative—and convoluted—interpretation of Dr. Hye's opinions, which the ALJ was not  
7 required to accept. Even if plaintiff's proposed interpretation is plausible, the Court may not  
8 accept it over the ALJ's interpretation. *Thomas*, 278 F.3d at 954.

9 Plaintiff next argues that the ALJ improperly relied on his own interpretation of the  
10 medical evidence, which Dr. Hye disputed in her April 2019 rebuttal letter. Dkt. 11 at 8. In the  
11 order reversing the first ALJ decision, the court found that Dr. Hye's April 2019 letter  
12 undermined the ALJ's assessment of her December 2017 opinion and directed the ALJ to  
13 reevaluate the opinions on remand. Tr. 1161. But the ALJ was not required to accept Dr. Hye's  
14 opinions, either as originally given or as explained in the rebuttal letter. Rather, the ALJ was  
15 required to evaluate the persuasiveness of Dr. Hye's opinions pursuant to the revised regulations.  
16 The fact that the ALJ found the opinions unpersuasive does not establish error in the ALJ's  
17 assessment of them.

18 Finally, plaintiff argues that Dr. Hye did not opine on physical limitations but rather  
19 reported her observations of plaintiff's pain and fatigue. Dkt. 11 at 7. However, Dr. Hye  
20 repeatedly stated that the limitations she opined were due to plaintiff's physical impairments  
21 combined with her mental impairments. For example, in December 2017 Dr. Hye attributed  
22 plaintiff's cognitive impairment to fibromyalgia and pain as well as anxiety and depression; her  
23 social isolation to pain, anxiety, and fatigue; and her low frustration tolerance to her comorbid

1 physical and mental health issues. Tr. 843-44. In April 2019, Dr. Hye opined that plaintiff's  
2 "mental and physical issues can have a significant impact on her mood." Tr. 1385. She opined  
3 that plaintiff would not be able to manage a household on her own due to her medical and  
4 psychological symptoms. Tr. 1386. And she opined that plaintiff "suffers from chronic medical  
5 and mental health issues" that affect her ability to work on a sustained basis and, based on the  
6 unpredictability of her panic disorder and fibromyalgia it was unlikely that she could return to  
7 consistent, full-time work. Tr. 1387. The ALJ could reasonably find that the opinions of Dr. Hye,  
8 who is a psychologist and not a medical doctor, were not persuasive because she repeatedly  
9 opined on limitations caused at least in part by plaintiff's physical impairments, an area where  
10 she did not have medical expertise.

11 Similarly, the ALJ's finding that Dr. Hye relied on plaintiff's subjective reports is  
12 supported by Dr. Hye's own statements. For example, Dr. Hye stated that "to [her]  
13 understanding" plaintiff had significant daily functioning impacts because of her diagnoses and  
14 that plaintiff's functioning had declined significantly over the years "per her report." Tr. 843. In  
15 her rebuttal letter, Dr. Hye also relied on plaintiff's reports about her daily functioning, including  
16 when describing her mood and affect and her activities of daily living. Tr. 1385-87.

17 The ALJ explained the reasons he found Dr. Hye's opinions to be unpersuasive, and  
18 those reasons were supported by substantial evidence. The ALJ did not err in discounting those  
19 opinions.

20 Although not assigned as a separate error, plaintiff argues that the ALJ discounted the  
21 opinion of Alyssa Ruddell, Ph.D., for the same reasons he discounted Dr. Hye's opinions and  
22 that this was also erroneous for the reasons she argued above. Dkt. 11 at 9. Because the Court  
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1 found no error in the ALJ's assessment of Dr. Hye's opinion, the court declines to address this  
2 argument based on the same assertions of error.

3       2.       *Ms. Antone and Dr. Macatuno*

4       In December 2017, Ms. Antone, plaintiff's physical therapist, opined that plaintiff could  
5 carry 10 pounds occasionally and less than 10 pounds more frequently; she could stand and walk  
6 less than 2 hours per workday, sit for 4 hours per workday, and needed to shift positions at will  
7 and lie down during a work shift; she had postural, reaching, pushing/pulling, and environmental  
8 limitations; and she had other limitations, including a need to be absent from work more than  
9 three times per month and limitations on coping with stress. Tr. 854-61. Dr. Macatuno cosigned  
10 Ms. Antone's opinion and completed a separate form stating that she agreed with Ms. Antone's  
11 opinions. Tr. 861, 862-69.

12       The ALJ found this opinion to be unpersuasive because it was a on a check-box form, it  
13 was inconsistent with the objective medical evidence of record, including plaintiff's frequently  
14 mild or unremarkable objective physical examination findings, and it was unsupported by the  
15 unremarkable objective examination findings of Dr. Macatuno, including generally normal gait  
16 findings and normal motor function testing. Tr. 1048.

17       Plaintiff asserts that the court previously found that the types of findings cited by the ALJ  
18 were consistent with findings that could be expected from plaintiff's fibromyalgia, arguing that  
19 the ALJ's findings on remand did not cure the error. Dkt. 11 at 10. This argument refers to the  
20 court's previous finding that the ALJ erred in assessing plaintiff's testimony about fibromyalgia.  
21 Tr. 1154. Plaintiff fails to explain how this finding establishes error in the ALJ's assessment of  
22 this medical opinion.  
23

1 Plaintiff also argues that the ALJ failed to discuss why the findings he cited were more  
2 persuasive than the limited range of motion and reduced strength noted in the objective testing  
3 during physical therapy appointments and the observations of increased pain during static  
4 positioning. Dkt. 11 at 10-11. However, “determining whether inconsistencies are material (or  
5 are in fact inconsistencies at all) and whether certain factors are relevant to discount the opinions  
6 of [medical providers] falls within [the ALJ’s] responsibility.” *Morgan v. Comm’r of Soc. Sec.*  
7 *Admin.*, 169 F.3d 595, 603 (9th Cir. 1999). The ALJ was entitled to find the opinion less  
8 persuasive based on the inconsistent findings he identified, even if plaintiff can identify other  
9 findings that she asserts were not inconsistent.

10 Finally, plaintiff asserts that the ALJ failed to consider limitations arising from plaintiff’s  
11 gastroparesis and kidney impairment, which plaintiff states were not addressed in the decision.  
12 Dkt. 11 at 11. Plaintiff does not further develop this argument, either by pointing to evidence that  
13 the ALJ should have considered but did not, or by identifying any limitations she alleges were  
14 caused by these impairments and that the ALJ failed to include. The Court declines to address  
15 this perfunctory assertion, with no discussion of the applicable law or facts. *See Ve Thi Nguyen v.*  
16 *Colvin*, No. C13-882 RAJ-BAT, 2014 WL 1871054 at \* 2 (W.D. Wash., May 8, 2014)  
17 (unpublished) (*citing Vandenboom v. Barnhart*, 421 F.3d 745, 750 (8th Cir. 2005) (rejecting out  
18 of hand conclusory assertion that ALJ failed to consider whether claimant met listings because  
19 claimant provided no analysis of relevant law or facts regarding listings); *Perez v. Barnhart*, 415  
20 F.3d 457, 462 n. 4 (5th Cir. 2005) (argument waived by inadequate briefing); *Murrell v. Shalala*,  
21 43 F.3d 1388, 1389 n. 2 (10th Cir. 1994) (perfunctory complaint fails to frame and develop issue  
22 sufficiently to invoke appellate review)). However, because the Court is remanding this case for  
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1 further administrative proceedings, plaintiff is free to assert any arguments she has with respect  
2 to these impairments on remand.

3 **B. Plaintiff's testimony**

4 Plaintiff argues that the ALJ failed to give specific, clear, and convincing reasons for  
5 discounting her testimony. Dkt. 11 at 11. Where, as here, the ALJ did not find that plaintiff was  
6 malingering, the ALJ must provide clear and convincing reasons to reject his testimony. *See*  
7 *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001). An ALJ does this by making specific  
8 findings supported by substantial evidence. "General findings are insufficient; rather, the ALJ  
9 must identify what testimony is not credible and what evidence undermines the claimant's  
10 complaints." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). In other words, an ALJ's finding  
11 that a claimant's testimony is not credible must be "sufficiently specific to allow a reviewing  
12 court to conclude the adjudicator rejected the claimant's testimony on permissible grounds and  
13 did not arbitrarily discredit a claimant's testimony regarding pain." *Brown-Hunter v. Colvin*, 806  
14 F.3d 487, 493 (9th Cir. 2015). A single conclusory statement rejecting a claimant's testimony  
15 that fails to identify specifically which statements the ALJ found not credible and why is not  
16 sufficient to reject a claimant's testimony, even when that statement is followed by a summary of  
17 the evidence. *Id.*

18 Here, the ALJ found that plaintiff's "treatment-seeking history, diagnostic test results,  
19 clinical signs, reported symptoms, medications and other prescribed treatment demonstrate that  
20 the claimant's statements about the intensity, persistence, and limiting effects of his or her [sic]  
21 symptoms are inconsistent." Tr. 1044. The ALJ followed this statement with a summary of  
22 treatment notes pertaining to her physical and mental impairments. Tr. 1044-48.

1 Plaintiff argues that the ALJ simply summarized the treatment notes and other findings,  
2 with no reference to how they undermined her testimony or connection to any specific  
3 impairment was legal error. Dkt. 11 at 11-12. The Court agrees. The ALJ failed to identify which  
4 of plaintiff's statements the ALJ found not credible, did not identify what evidence undermined  
5 plaintiff's complaints, and did not identify any inconsistencies between the evidence and  
6 plaintiff's testimony. Instead, the ALJ merely described the treatment notes without making any  
7 connection between those notes and plaintiff's testimony. Providing a summary of the medical  
8 evidence in support of an RFC finding is not the same as providing clear and convincing reasons  
9 for discounting a claimant's testimony. *Brown-Hunter*, 806 F.3d at 494. The Court finds that the  
10 ALJ failed to give clear and convincing reasons to discount plaintiff's testimony and that this  
11 was harmful legal error.

12 **C. Lay witness statements**

13 Plaintiff's mother and uncle provided lay witness statements describing their observations  
14 of how plaintiff's impairments impacted her functioning. Tr. 279-86, 324-27. The ALJ stated  
15 that he considered the statements but because they were statements from nonmedical sources, he  
16 was not required to articulate how he considered them in terms of persuasiveness. Tr. 1051.

17 Plaintiff argues that the ALJ applied the wrong legal standard when declining to address  
18 how he considered the lay witness statements. Dkt. 11 at 14. The Commissioner argues that the  
19 ALJ's approach was valid under the revised regulations. Dkt. 16 at 7-8.

20 The relevant portion of the revised regulations states: "Evidence from nonmedical  
21 sources. We are not required to articulate how we considered evidence from nonmedical sources  
22 using the requirements in paragraphs (a)-(c) in this section." 20 C.F.R. § 404.1520c(d). The plain  
23 language of the regulation does not state that the ALJ is not required to discuss the weight given

1 to lay witness statements, nor does it state that the ALJ need not provide an explanation for  
2 rejecting a lay witness statement. It states that the ALJ is not required to discuss lay witness  
3 statements using the framework required for discussing medical opinions.

4 Interpreting this regulation as eliminating any requirement to discuss lay witness  
5 evidence would permit an ALJ to discount, without explanation, probative evidence of disability.  
6 Indeed, allowing the ALJ to discount lay witness evidence with no explanation would run afoul  
7 of 42 U.S.C. § 405(g), which permits the court to reverse an ALJ decision that is not supported  
8 by substantial evidence. The court cannot determine whether a decision is supported by  
9 substantial evidence when evidence is rejected without explanation or comment.

10 The ALJ erred in failing to provide any discussion regarding the weight given to the lay  
11 witness statements and failing provide any rationale for discounting those statements.

12 **D. Remand for benefits**

13 Plaintiff asks the Court to remand this case with instructions to award benefits. Dkt. 11 at  
14 16. The Court may remand for an award of benefits where (1) the record has been fully  
15 developed and further administrative proceedings would serve no useful purpose, (2) the ALJ has  
16 failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or  
17 medical opinion, and (3) if the improperly discredited evidence were credited as true, the ALJ  
18 would be required to find the claimant disabled on remand. *Garrison v. Colvin*, 759 F.3d 995,  
19 1020 (9th Cir. 2014). Courts have flexibility in applying this rule and may instead remand for  
20 further proceedings where the record as a whole “creates serious doubt that a claimant is, in fact,  
21 disabled.” *Id.* at 1021.

22 The court finds that not all the conditions for an award of benefits are met. Although the  
23 record has been fully developed and the ALJ failed to provide legally sufficient reasons to reject

1 evidence, it is not clear that even if the improperly rejected evidence were credited as true, the  
2 ALJ would be required to find plaintiff disabled. Rather, the court finds that further  
3 administrative proceedings would be useful in order to allow the ALJ to reevaluate plaintiff's  
4 testimony and the lay witness statements along with the rest of the evidence. Accordingly, the  
5 court finds that remand for further administrative proceedings is the proper remedy.

### 6 **CONCLUSION**

7 For the foregoing reasons, the Commissioner's decision is **REVERSED** and this case is  
8 **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).  
9 On remand, the ALJ shall reevaluate plaintiff's testimony and the lay witness evidence. The ALJ  
10 The ALJ shall further develop the record and redo the five-step disability evaluation process as  
11 the ALJ deems necessary and appropriate to make a new decision.

12 DATED this 13th day of September, 2022.

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15 BRIAN A. TSUCHIDA  
16 United States Magistrate Judge  
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